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General Assembly

Distr.: General
1 July 2015

English only

Human Rights Council
Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights
First session
Geneva, 6 – 10 July 2015

Written statement* submitted by Scottish Human Rights Commission

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 June 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-10979 (E)
1510979

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The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs. SHRC was established by an Act of the Scottish Parliament. It has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice, including through education, training and awareness raising, and by publishing research. SHRC also has a number of powers including:

-The power to conduct inquiries into the policies or practices of Scottish public authorities.

-Recommending such changes to Scottish law, policy and practice as it considers necessary.

-The power to enter some places of detention as part of an inquiry.

-The power to intervene in some civil court cases.

SHRC is one of the three NHRIs in the UK and currently chairs the European Network of NHRIs. SHRC is a member of the UK's National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Introduction

SHRC welcomes the opportunity to provide an update to OEIWG on our work and current progress on the area of Business and Human Rights in Scotland, in particular in relation to the development of a National Action Plan on Business and Human Rights to implement the UN Guiding Principles on Business and Human Rights and raise awareness among Scottish companies of their human rights responsibilities.

Scottish Context

Scotland's National Action Plan for Human Rights (SNAP) is a "roadmap for the progressive realisation of international human rights in Scotland". Currently in its second year of implementation, it has been facilitated by the Scottish Human Rights Commission in partnership with a broad range of public and third sector partners, including Government, public bodies, umbrella organisations and civil society organisations. SNAP's vision is of a Scotland in which everyone is able to live with human dignity. It coordinates action by a wide range of public bodies and voluntary organisations towards achieving this vision, which is underpinned by agreed outcomes, priorities and a process for working together between 2013- 2017.

Under Outcome 3: Better World, SNAP contains a number of priorities including, exploring the benefits for further incorporation of human rights treaties into the law of Scotland, implementing international obligations, commitment to climate justice, and creating a coordinated plan of action to implement the UN guiding principles on Business and Human Rights.

Development of a National Action Plan on Business and Human Rights

Through its broad engagement with SNAP, the Scottish Government has committed to developing a national action plan to implement the UN Guiding Principles on Business and Human Rights and raise awareness among Scottish companies of their human rights responsibilities.

Earlier this year, SHRC together with the Scottish Government and civil society agreed on a process for the development of the action plan, which will consist of three stages:

1. Development of a National Baseline Assessment (NBA), which is broad yet careful and systematic evaluation of a State's current implementation of the United Nations Guiding Principles, based on an inclusive and transparent process which will inform and underpin the development of the action plan.

2. Drafting and finalisation of the National Action Plan on Business and Human Rights, which will identify gaps and priorities, as well as setting out how the action plan will be implemented and monitored.

3. Monitoring and reviewing the Action Plan based on relevant indicators to ensure we learn and share the lessons internationally.

Progress to Date

In May 2015 the Scottish Government issued an invitation to tender for the NBA. The NBA will provide an understanding of the current position in Scotland with respect to our approach to the UNGPs, and support the identification of potential gaps in practice, helping partners to understand existing good practice in approach to the UNGPs by the business community. The invitation to tender is available at the Public Contracts Scotland website.

The contractor is scheduled to be appointed on 1 July 2015 and the NAP drafting process will begin in Autumn 2015.

Example of other related work under SNAP

As part of SNAP, SHRC worked with the Glasgow 2014 Commonwealth Games, and other partners, to develop and adopt a human rights policy. Building on over a year of collaboration with the Commission, the Glasgow Games Organising Committee has, for the first time in over 80 years of Commonwealth Games history, adopted a human rights policy for the Games. The policy sets out how human rights have been, and will be protected and promoted in the preparation and delivery of the Glasgow Games. This document includes a procurement sustainability policy for the Games. This make the Glasgow Games an example for others to follow internationally.

The Commission is currently engaged with the Scottish Government and the Equality and Human Rights Commission (SHRC) in developing national guidelines that give proper consideration to human rights standards during the procurement process.

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Written statement* submitted by Business and Human Rights Resource Center

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 June 2015]

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Business & Human Rights Resource Centre contribution to open ended intergovernmental working group on transnational corporations and other business enterprises

Business & Human Rights Resource Centre is following the debate on a proposed binding treaty with a section dedicated to the latest news, initiatives, blogs and commentaries on the issue as well. This section also follows the activities of the open-ended intergovernmental working group (also available in French and Spanish).

The prospect of an international binding treaty on business and human rights has been a controversial subject within the business and human rights field. The open-ended intergovernmental working group (OEIWG) has a unique opportunity to address some of these tensions. We believe the following approaches will support a robust and constructive debate to deliver a successful Treaty:

- Reinforce the narrative that the Treaty and Guiding Principles are complementary rather than mutually exclusive, and that the legal and normative approaches usually strengthen each other.

- Ensure transparency throughout the process. Transparency around procedures, membership, timetable, and outcomes of intergovernmental working group sessions, will support active and timely participation.

- Undertake an open process. An open consultation including all stakeholders including business, academics and civil society, with special attention to the voice of victims of corporate human rights abuses and human rights defenders, is important for an inclusive treaty process which builds trust and ownership.

Below is a list of key materials representing the main viewpoints and questions from stakeholders. From a reading of these opinions, some of the key areas which the OEIWG is being asked to address include: the rights that a treaty will protect; the subjects of the treaty; the scope of jurisdiction; relationship with other existing international instruments; enforcement/oversight mechanism.

NGOs:

Enhance the international legal framework on human rights, transnational corporations and other enterprises: Second statement by the Treaty Alliance Also available in Spanish & French
FIDH, 1 Jun 2015

- Recommendation for OEIWG to include States and civil society in the process; description of conduct giving rise to liability; allowing people with a claim to access to judicial remedies also outside their own home States.
  Side-Event: Legally Binding Instrument on Business and Human Rights: European perspectives
  CIDSE, FIAN Intl., FIDH, Franciscans Intl., Friends of the Earth Europe & Intl. Commission of Jurists, 19 Mar 2015

- Key points of discussion from an EU perspective: need for further action on extraterritoriality issues; identification of main existing challenges such as procedural problems regarding jurisdiction of national courts or the corporate veil; and EU participation in the OEIWG.

Corporations have rights. Now we need a global treaty on their responsibilities. Also available in French
Salil Shetty, Amnesty International, in Guardian (UK), 21 Jan 2015

- Recommendation to build the treaty on UN Guiding Principles and to make key provisions of these mandatory, setting out clearly what the state duty to protect means.

UN Business & Human Rights Framework: More action required at national and international level to stop human rights abuses by business
CIDSE, Dec 2014

- Analysis of treaty process as an opportunity to strengthen the UN Protect, Respect and Remedy Framework and its Guiding Principles.

Unity in Diversity: the advocates for the Guiding Principles and binding treaty can be complementary
Phil Bloomer, Business & Human Rights Resource Centre, 3 Nov 2014

- Encourages business and human rights advocates to seek an appropriate scale of complementarity and collaboration with each other.

"Does the World Need a Treaty on Business and Human Rights?" event in London
Business & Human Rights Resource Centre, Univ. of Notre dame Law School, 14 May 2014

- Speakers raised the following issues: Motives for a treaty; weather it will strengthen or weaken the UN Guiding Principles; if a better route to ending impunity is to make national and regional systems work.

Former UN Special Representative on business and human rights, Prof. John Ruggie:

Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights
23 Jan 2015

- Argues for negotiations on binding treaty to be built on what has already been achieved; main efforts must be meaningful in relation to daily lives of people.

Quo Vadis? Unsolicited Advice to Business and Human Rights Treaty Sponsors
9 Sep 2014

- Key challenges identified: weak political mandate of OEIWG; scope and scale of proposed treaty; complementarity between treaty and UN Guiding Principles.
- Suggestion of steps to be taken: inclusion of views of all stakeholders in OEIWG; treaty to build on UN Guiding Principles.

UN Special Rapporteur on freedom of assembly & association, Mr Maina Kiai:

Natural resources sector: UN expert calls for binding human rights treaty for corporations
18 Jun 2015

- Key quotes: "An instrument negotiated to create binding obligations for companies is desirable and should set forth norms for all business entities, national and transnational."
- "[V]oluntary obligations for corporations…do not go far enough in ensuring that both States and businesses are held accountable for any failures to comply with them."

Intl. Coordinating Committee of National Human Rights Institutions

Intl. Coordinating Committee of National Human Rights Institutions statement on the subject of Business and Human Rights at the 29th regular session of the UN Human Rights Council

Jun 2015

- Recommendations on complementarity between a binding instrument and the UN Guiding Principles to strengthen national action plans; instrument grounded in facts–based evidence to demonstrate concrete value to human right protection; inclusion of enterprises operating domestically and transparent process.

Academics:

Intl. Commission of Jurists holds workshop on proposed treaty on business & human rights

Doug Cassel, Notre Dame Law School, 1 Jun 2015

- Discussion on whether a treaty should address, not only transnational, but also national business enterprises; attribution of criminal liability to companies; different options for a treaty; allowing victims of corporate human rights abuses access to a remedy.

Key issues in the debate on a binding business and human rights instrument
Shane Darcy, NUI GALWAY, on Business & Human Rights in Ireland, 13 Apr 2015

- Analysis key issues such as enforcement, monitoring and implementation, and addressing the responsibilities of States, companies or both; access to justice and extraterritoriality.
- Also includes suggestions on having a consultative and open approach; using existing treaties and conventions to draft a business and human rights treaty.

The Human Rights Obligations of Business: Reimagining the Treaty Business
Surya Deva, City University of Hong Kong, 12 Mar 2014

- Recommends for treaty to cover all human rights and apply to national and transnational businesses, with state-based and non-state based enforcement mechanism.

Add in Doug's note?
Business:

Opportunity to comment draft observations by international business on the UN business and human rights treaty process
International Organisation of Employers, 2 May 2015

- Argues for UN treaty process not to undermine the on-going implementation of the UN Guiding Principles; recommends for treaty to address all companies, not only multinationals, and for the process to be inclusive.

Economist Intelligence Unit survey
March 2015

- 25% of respondents (senior corporate executives, corporate leaders) declared that a binding treaty would enable companies to fulfil their corporate responsibility to respect human rights; 32% said it would be slightly useful.
- Safaricom CEO said: "We need to move from voluntary compliance to something harder."